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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-83272; File No. SR-NASDAQ-2018-038]

May 17, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Amend Rule 4702(b)(14) to Establish a Price Improvement Only Variation on the Midpoint Extended Life Order

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 4, 2018, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 4702(b)(14) to establish a price improvement only variation on the Midpoint Extended Life Order.

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 4702(b)(14) to establish a “Price Improvement Only” or “PIO” option for the Midpoint Extended Life Order (“M-ELO”).

On March 7, 2018, the Commission issued an order approving the Exchange’s proposal to adopt the M-ELO as a new order type.³ A M-ELO is a non-displayed order that is available to all members but interacts only with other M-ELOs. It is priced at the midpoint between the National Best Bid and Offer (“NBBO”) and it does not become eligible for execution until it completes a half second holding period (the “Holding Period”).⁴ Once the Holding Period elapses, a M-ELO becomes eligible for execution against other M-ELOs on a time-priority basis.⁵

Under existing Rule 4702(b)(14), a member may designate a limit price for a M-ELO, in which case the order would be: (1) eligible for execution in time priority after satisfying the Holding Period if upon acceptance of the order by the system, the midpoint price is within the limit set by the member; or (2) held until the midpoint falls within the limit set by the member, at

³ See Securities Exchange Act Release No. 34-82825 (Mar. 7, 2018), 83 FR 10937 (Mar. 13, 2018).

⁴ If a member modifies a M-ELO during the Holding Period, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, then such modification will cause the Holding Period to reset.

⁵ If a member modifies a M-ELO after the Holding Period elapses, other than to decrease the size of the order or to modify the marking of a sell order as long, short, or short exempt, then such modification will trigger a new Holding Period for the order.

which time the Holding Period would commence and thereafter the system would make the order eligible for execution in time priority.

The Exchange now proposes to amend Rule 4702(b)(14) to adopt an optional “Price Improvement Only” or “PIO” option for the M-ELO.

Under the Exchange’s proposal, if a member opts to designate a M-ELO with PIO, then the M-ELO will execute only in circumstances where the NBBO midpoint price provides the Order with price improvement (of at least a half penny for a MELO priced at or above \$1.00) as measured against the original limit price of the M-ELO with PIO (i.e., lower than a buy limit price or higher than a sell limit price).⁶ The Holding Period of a M-ELO with PIO will commence: (1) upon acceptance of the Order by the System, if the midpoint price provides price improvement on the limit set by the participant; or (2) when the midpoint price updates such that it provides price improvement on the limit set by the participant. If, at the time when the System accepts the Order, the midpoint of the NBBO equals or is higher than the participant’s buy limit price or lower than the participant’s sell limit price, as applicable, then the Holding Period for the Order will not commence unless or until the midpoint of the NBBO shifts in a manner that would allow the M-ELO with PIO to execute at a price that provides price improvement, in which case the Holding Period for the Order will commence. If, upon satisfaction of the Holding Period, the midpoint of the NBBO continues to provide price improvement relative to the designated limit price, then the M-ELO with PIO will be eligible for execution in time priority and may execute at that improved price. If upon satisfaction of the Holding Period, however, the midpoint of the NBBO no longer provides price improvement relative to the designated limit price, then the M-

⁶ To utilize the PIO variant of M-ELO, a participant must specify a limit price for the order upon entry. If a participant fails to set a limit price, then the Exchange will not accept the order.

ELO with PIO will not be eligible for execution, and it will remain posted on the Nasdaq Book (maintaining its relative priority) unless and until the midpoint of the NBBO shifts in a manner that does provide price improvement, at which point the M-ELO with PIO will be eligible for execution at the improved price.

In all other respects, a M-ELO with PIO will behave the same as an ordinary M-ELO, and as set forth in Rule 4702(b)(14). For example, a M-ELO with PIO will interact only with other M-ELOs (including both ordinary M-ELOs and M-ELOs with PIO) and it will be ranked among ordinary M-ELOs and M-ELOs with PIO on the Nasdaq Book on a time priority basis.

Example 1

Member A enters a M-ELO with PIO to buy 1,000 shares with a limit price of \$11.04. At the same time, Member B enters a M-ELO with PIO to sell 1,000 shares with a limit price of \$11.02. Assume the Best Bid at the time of entry of these Orders is \$11.00 and the Best Offer is \$11.06, such that the midpoint price is \$11.03. Because the \$11.03 midpoint price provides price improvement as measured against Member A's specified limit price and as measured against Member B's specified limit price, the Holding Periods for the two Orders will commence. After the Holding Periods for both Orders conclude, the NBBO remains unchanged and so the Orders are eligible for execution. Accordingly, the two Orders will then execute against each other at \$11.03.

Example 2

Member A enters a M-ELO with PIO to buy 500 shares with a limit price of \$11.04. At the same time, Member B enters a M-ELO with PIO to sell 1,000 shares with a limit price of \$11.03. Just after Member B enters its order, Member C enters a M-ELO to sell 1,000 shares at a limit price of \$11.03. Assume the Best Bid at the time of entry of these Orders is \$11.00 and

the Best Offer is \$11.06, such that the midpoint price is \$11.03. The Holding Period for Member B's Order will not commence because its limit price equals the midpoint of the NBBO.

However, the Holding Periods for Member A's Order and Member C's Order will commence because the \$11.03 midpoint of the NBBO is lower/higher than the respective limit prices associated with these two Orders [sic]. At the conclusion of Member A and Member C's Holding Periods, the NBBO remains unchanged. Member A's Order will execute against Member C's Order for 500 shares.

Example 3

Member A enters a M-ELO with PIO to buy 500 shares with a limit price of \$11.04. At the same time, Member B enters a M-ELO with PIO to sell 500 shares with a limit price of \$11.03. Assume the Best Bid at the time of entry of these Orders is \$11.00 and the Best Offer is \$11.06, such that the midpoint price is \$11.03. At the time of Order entry, the Holding Period for Member B's Order will not commence, because the midpoint of the NBBO equals, but is not higher than, the limit price that Member B designated on its M-ELO with PIO. However, the Holding Period for Member A's M-ELO with PIO Order will commence, because the \$11.03 midpoint provides price improvement as measured against Member A's specified limit price. At the conclusion of Member A's Holding Period, the Best Bid becomes \$11.02 and the Best Offer remains \$11.06, such that the midpoint price becomes \$11.04. The Holding Period for Member B's Order will commence, because the \$11.04 midpoint price provides price improvement as measured against Member B's specified limit price. At the conclusion of Member B's Holding Period, Member B's Order will not execute against Member A's Order because the \$11.04 midpoint price does not provide price improvement as measured against Member A's specified

limit price. However, Member A's Order will remain posted on the Nasdaq book and retain its priority.

The Exchange believes that the M-ELO with PIO will afford members more flexibility with respect to their use of M-ELO and greater opportunities for price improvement when they do so. In particular, the proposal will afford M-ELO participants with a measure of protection against unfavorable movements in the NBBO that may occur during half-second Holding Periods that are unique to M-ELOs. In absence of the PIO feature, members facing such movements will have to constantly manage their M-ELO orders (e.g., canceling and resubmitting their orders). The PIO feature will free members from the need to constantly manage their M-ELO orders during their Holding Periods

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The reasons why the M-ELO with PIO is consistent with the Act are generally the same as those that the Commission identified in its order approving the M-ELO order type.⁹ That is, just as the Commission determined that M-ELO "could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons,

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ See Securities Exchange Act Release No. 34-82825, supra, 83 FR at 10938-41.

including institutional investors,”¹⁰ so too will the M-ELO with PIO do so in that the M-ELO with PIO will offer M-ELO investors increased flexibility and efficiency in achieving their investment outcomes as well as new opportunities for price improvement. Moreover, just as the Commission determined that the M-ELO is “reasonably designed to enhance midpoint execution quality on the Exchange” notwithstanding the fact that M-ELO allows market participants to elect not to execute against certain contra-side interest,¹¹ the Exchange believes that M-ELO with PIO is reasonably designed in that the additional condition that a M-ELO with PIO imposes on a M-ELO execution – the midpoint of the NBBO must provide price improvement as measured against the limit price that the participant designates – is not unfair.¹² Like the M-ELO, the M-ELO with PIO is equitable insofar as it will be available to all Nasdaq members. In sum, the Exchange believes that the M-ELO with PIO, like the M-ELO “represents a reasonable effort to enhance the ability of longer-term trading interest to participate effectively on an exchange, without discriminating unfairly against other market participants or inappropriately or unnecessarily burdening competition.”¹³

The Exchange also believes that its proposal is consistent with Regulation National Market System Rule 612, which provides that “[n]o national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS

¹⁰ See id. at 10938-39.

¹¹ See id. at 10939.

¹² As the Commission noted in its order approving M-ELO, the minimum quantity and post-only order functionalities that the Exchange offers provide for similar conditionality. See id. See also SR-NASDAQ-2017-074 Amendment No. 2, at 19 (Oct. 30, 2017) (citing similarity between M-ELO and the Nasdaq BX Retail Price Improvement order type, which, as described in BX Rule 4702(b), is an order type that executes only against a retail order and only if its price is at least \$0.001 better than the NBBO).

¹³ Securities Exchange Act Release No. 34-82825, supra, 83 FR at 10940.

stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share.”¹⁴ The Exchange believes that its proposal is consistent with Rule 612 because a M-ELO with PIO is a non-displayed order that the Exchange does not accept or rank at a sub-penny increment. Although a M-ELO with PIO guarantees at least a half-penny of price improvement relative to a member’s designated limit price, the Exchange does not believe that this feature should be construed as the Exchange accepting a M-ELO with a price that is implicitly a half-penny below the limit price. The ability to execute a M-ELO with PIO and the extent of the price improvement it ultimately provides depends upon variables that include the movement of the midpoint of the NBBO relative to the limit price and the spread of the NBBO. At the time that a member enters a M-ELO with PIO, neither the member nor the Exchange knows whether or at what price the order will execute at the conclusion of the Holding Period. Even if a member is amenable to or specifically intends for a M-ELO with PIO to execute at a half-penny below the limit price, this outcome is not assured and it is out of the member’s control. The order may not execute at all or, if it does so, it may provide the member with price improvement of a full penny or more. Because the ultimate terms of a M-ELO with PIO are unknowable at the time of acceptance and because a sub-penny execution price is only one of a range of possible outcomes for a M-ELO with PIO, a M-ELO with PIO should be deemed to be consistent with Rule 612.

Moreover, the Exchange notes that the Commission itself stated expressly, when it first adopted Rule 612, that the Rule does not prohibit midpoint orders or price improvement orders that merely result in sub-penny executions:

¹⁴ 17 CFR 242.612.

Rule 612 will not prohibit a sub-penny execution resulting from a midpoint or volume-weighted algorithm or from price improvement, so long as the execution did not result from an impermissible sub-penny order or quotation. The Commission believes at this time that trading in sub-penny increments does not raise the same concerns as sub-penny quoting. Sub-penny executions do not cause quote flickering and do not decrease depth at the inside quotation. Nor do they require the same systems capacity as would sub-penny quoting. In addition, sub-penny executions due to price improvement are generally beneficial to retail investors.¹⁵

The Exchange does not believe that a M-ELO with PIO that executes at a sub-penny price would implicate any of the concerns that underlie Rule 612. For example, it would not cause quote flickering because a M-ELO with PIO is hidden and, by definition, it does not affect displayed quotes. Also, the Exchange does not expect that the addition of PIO would cause widespread system capacity issues that the Commission feared would result from sub-penny quoting. The Exchange notes that the universe of M-ELOs and M-ELO PIOs is limited because these orders will interact only with each other and not with the broader population of orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the addition of the Price Improvement Only variation will only boost the attractiveness of the M-ELO among market participants who desire or require additional trading flexibility for the M-ELO as well as those that seek additional opportunities

¹⁵ Securities Exchange Act Release No. 34-51808 (Jun. 9, 2005), 70 FR 37496, 37556 (Jun. 29, 2005).

for price improvement. Accordingly, the Exchange expects that its proposal will draw new market participants to Nasdaq and increase the extent to which existing participants utilize M-ELO. To the extent the proposed change is successful in attracting additional market participants, Nasdaq believes that the proposed change will promote competition among trading venues by making Nasdaq a more attractive trading venue for long-term investors and therefore capital formation.

In any event, the Exchange notes that it operates in a highly competitive market in which market participants can readily choose between competing venues if they deem participation in Nasdaq's market is no longer desirable. In such an environment, the Exchange must carefully consider the impact that any change it proposes may have on its participants, understanding that it will likely lose participants to the extent a change is viewed as unfavorable by them. Because competitors are free to modify the incentives and structure of their markets, the Exchange believes that the degree to which modifying the market structure of an individual market may impose any burden on competition is limited.

The Exchange also does not believe that its proposal will impose an undue burden on intramarket competition. Just as with an ordinary M-ELOs [sic], the M-ELO with PIO will be available to all Nasdaq members and it will be available on an optional basis. Thus, any member that seeks to avail itself of the benefits of a M-ELO with PIO or avoid its costs can choose accordingly. Although the proposal provides flexibility and price improvement opportunities specifically for investors that select the M-ELO order type, the Exchange believes that all market participants will benefit to the extent that this proposal contributes to a healthy and attractive market that is attentive to the needs of all types of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be

disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-038 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2018-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-NASDAQ-2018-038 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Eduardo A. Aleman,
Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12).

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